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ADDENDUM TO **FINAL STATEMENT OF REASONS**

CALIFORNIA CODE OF REGULATIONS

TITLE 15: Chapter 1, Subchapter 4, Article 1.6, Section 3269.1, Article 5, Section 3315, and Article 7, Section 3341.

Integrated Housing

The regulations are being modified by 15 day Notice to provide additional clarity, consistency, accuracy, and minor grammatical revisions, as the result of comments received in response to the rulemaking review by the Office of Administrative Law staff. Several of the more significant changes include:

Section 3269.1 has been amended for clarity by removing the term “objective criteria,” as the significance of what constitutes such criteria is already included in the language “individual case factors.” Additionally, examples of “individual case factors” are now listed. For consistency, the “Integrated Housing Plan” and the “Integrated Housing Policy” are now combined such that the acronym IHP will only refer to the “Integrated Housing Policy” (IHP).

Subsection 3269.1(a) has been amended for clarity by removing the word “authorized” when referring to the computer tracking system.

Subsection 3269.1(b)(4) has been amended for clarity by reversing the words “Temporarily” and “Restricted” to conform to the title of the subsection, “Restricted Temporarily by Custody”.

Subsection 3269.1(d) has been amended for clarity by removing the word “movement” and replacing it with “bed assignment change.”

Subsection 3269.1(e) has been amended for accuracy to reflect the correct Title 15 section to charge an inmate for refusing to participate in the IHP, specifically Title 15 subsection 3005(c), not 3005(b). Also, the Specific Act an inmate is to be charged with for refusing to participate in the IHP has been corrected to “Willfully Resisting, Delaying, or Obstructing any Peace Officer in the Performance of Duty,” a Division D offense per Title 15 subsection 3323(f)(6).

Section 3269.1's reference section has been amended for accuracy to reflect the correct United States Supreme Court cite, and the accurate cite for the *Johnson v. California* Settlement Agreement.

Subsection 3315(f)(5)(M) has been amended to correct the title of the violation to correspond with the title of misconduct as presented in CCR subsection 3005(c) and section 3269.1.

Subsection 3341.5(c)(9)(L) has been amended to correct the title of the segregated housing term to correspond with the title of misconduct as presented in CCR subsection 3005(Cc) and section 3269.1.

The choices made in the development of the IHP regulations to conform to a legal mandate to more fully achieve integrated housing in the prison system are based on the expertise of multiple staff. The Department has carefully reviewed the integrated housing plans of prisons in other states and the Federal Bureau of Prisons, and found that integration has been an effective tool in the management of gangs and disruptive groups. There has been reduced violence, housing options have increased, and most significantly, racial tensions have been reduced. Integrated housing has also contributed to breaking down prejudicial barriers and perceptions, and has promoted increased tolerance of others to reflect community values. The Department recognizes that extending the IHP to the entire California prison population will not result in the above achievements in just a short period of time. The Department has determined it is necessary to set time goals however, and to that end has developed an Integrated Housing Code (IHC) system for every inmate in the prison system in the current calendar year. In addition, training is being conducted for staff and inmates have been provided training materials about the IHP in the current calendar year. The Department has set the goal of January 1, 2008, to begin the implementation of the IHP at facilities that the Department determines will be most successful in early implementation. The Department will then modify aspects of the roll-out of the IHP based on the experience of that first year, and continue to implement the IHP at all remaining institutions commencing on January 1, 2009. The Department does not expect to achieve its highest percentage of integration in that first full year. Rather the expectation is that a high level of integration will be achieved over a period of years.

The Department has determined that inmate housing assignments can no longer be based solely on an inmate's race. Housing assignments must instead be developed with available documentation and an inmate's individual case factors. While the totality of each inmate's case factors will be varied and numerous, several of the more significant case factors to be utilized in assessing an inmate's eligibility to participate in the Integrated Housing Policy (IHP) and were included in section 3269.1. Most notable in determining if an inmate is eligible to be housed with someone of another race is whether they have any history of racial violence, ranging from racial slurs to actual involvement in a race riot, as well as how consistent and recent that history might be. An isolated incident in an inmate's past may, in and of itself, not be sufficient to preclude that inmate being housed with a particular race. Also, while an inmate may not be able to live with inmates of a particular race, they may be able to live with other races.

The nature of an inmate's commitment offense, and the amount of time an inmate must serve, are also important factors to be considered in an inmate's housing. An inmate with a particularly violent commitment offense would be more carefully considered for being housed with an inmate of a similar offense as opposed with being housed with an inmate having committed a less serious offense. An inmate with a long sentence, or an indeterminate sentence, would more likely be housed with an inmate with a similar length of sentence. It is not inconceivable that an inmate with a long sentence, housed with an inmate that is soon to be paroled, might become jealous and assaultive. These case factors alone however, a violent commitment offense or a long sentence, would not preclude consideration for integrated housing.

An inmate's classification score is a valuable tool in assessing whether an inmate would be successful in participating in the IHP. A high or increasing classification score is indicative of an inmate's lack of desire or ability to conform to what are considered behavioral norms in the prison setting. Alternatively, inmates with lower classification scores are for the most part already participating in the IHP; they are already housed in Level I and Level II prisons in a dorm setting. An inmate's classification score is initially established at a reception center based on social factors, such as the inmate's age at the time of reception, their gang affiliation, or the length of their term. That score is adjusted each year at the time of their annual review, which is conducted to review an inmate's entire program ranging from such areas as housing to transfer requests to job and education status. An inmate's classification score will increase or decrease each year based on the inmate's behavior; it will increase if the inmate has received disciplinary write-ups, and decrease if the inmate has been disciplinary free. Therefore, inmates with a higher classification score would be considered to be less likely to conform to generally accepted behavioral norms, such as participating in the IHP, within the prison setting.

All inmates are assigned a custody level, which can range from a very secure Close A custody level which allows very limited access to the yard and to jobs, to a very unrestricted minimum custody designation, which allows much greater movement and access to the yard and to jobs. At the onset of a prison sentence most inmates will be assigned a more elevated custody level, particularly if their classification score is high. The longer an inmate conforms to what are considered generally accepted behavioral norms, the more privileges will be extended to provide incentives for good behavior such as greater opportunity for increased yard time and better paying jobs. Generally speaking inmates would prefer to be housed with someone with a custody level and classification score that is similar to theirs. Additionally, inmates with similar custody levels can frequently be released from and be returned to their cells at similar times.

Education in the correctional setting is recognized to be significant in contributing to an inmate's success in transitioning back into society upon release from prison. Inmate's that are involved in education programs are considered for housing together as they would be released and locked up at similar times. Additionally, inmate's that have a

high level of education would usually prefer not to be housed with an inmate that is functionally illiterate.

An inmate's disciplinary history, which may or may not include a history of racial incidents, is reflected in their classification score. Generally speaking, an inmate with a low classification score would prefer not to be housed with an inmate that has an extensive disciplinary history, or a disciplinary history that involves serious or violent rule infractions.

The Department has determined that an inmate's case factors must be reviewed at least once a year at an annual review, as set forth in Title 15 subsection 3375(k)(1)(A), to evaluate the appropriateness of an inmate's classification score and other programs where they are involved. An inmate's assigned case worker can present an inmate before a classification committee for any number of reasons throughout the year, although an inmate must be presented to a committee for their annual review to adjust the classification score up or down due their disciplinary history, to evaluate an inmate's programs and housing status, or to determine if an inmate is achieving any goals that may have been set by a previous committee. Upon an inmate's arrival at a reception center the inmate will be assigned an IHC, and at least each year thereafter at the annual review, or as case factors may change, the appropriateness of an inmate's IHC will be assessed and adjusted as necessary as set forth in Title 15 subsection 3269.1(b). The existing annual review process is the most logical time to continue to assess each inmate's status in the IHP.

The Department recognizes that it is unrealistic to expect all inmates to be able to successfully participate in the IHP due to individual case factors such as a history of racial violence, gang association, or a serious disciplinary history. Each inmate is to be interviewed, and their individual case factors reviewed, to assess their eligibility to participate in the IHP. The Department has determined that each inmate will be assigned an IHC eligibility code to assist staff in identifying which inmates are eligible to participate in the IHP, and which will only be able to partially participate or not be eligible to participate. To that end the Department has established that five eligibility codes are required to cover all possible categories of placement.

The Department expects that many in its inmate population, those who have not been a victim or perpetrator of a racially motivated crime, will be coded as Racially Eligible (RE) and be able to live with members of another race. The Department does acknowledge, however, that some inmates may have been involved in a racial incident with members of another race, and therefore are deemed to be ineligible to live with that race. These inmates will be coded as being Restricted Partially (RP), and would be considered for housing with inmates other than that particular race. Those inmates that have been involved in several racial incidents that include members of several races would be precluded from integrated housing, and would be coded as Restricted to Own (RO). They would not be precluded from participating in other aspects of prison life however, such as school or in jobs. There may be times when an inmate arrives at an institution with insufficient or conflicting information to determine their eligibility to be integrated in

their housing. These inmates will be coded as Restricted Temporarily (RT). Finally, if an inmate is deemed to be eligible to be housed with members of another race and there is no information or documentation to preclude such, and that inmate refuses to participate in the IHP, that inmate is coded Restricted by Refusal (RR). In that situation the inmate will be subject to disciplinary action and will be considered for alternative and more restrictive housing. It should be noted that in all situations the appropriateness of an inmate's IHC will be assessed at least at an inmate's Annual Review, or as case factors change, and adjusted as necessary.

The IHC is not the sole determinant on how an inmate is given a bed assignment. Each time an inmate newly arrives at a facility or requires a bed assignment change, they will be housed in the first available and appropriate bed, taking into consideration all relevant case factors. However, the regulations require staff to consider other available information that would indicate a risk or a safety concern for the inmate as well; the racial coding is not to be used absent the consideration of other information. To that end the Department has identified several specific areas that might indicate a risk or safety concern for an inmate, and has included them in the regulations. Staff will consider such security issues as placement of an inmate in an Administrative Segregation Unit (ASU). There are many reasons why an inmate may be placed in an ASU, such as to provide protection for the inmate or to protect other inmates or staff. If there is any indication that the reason for the ASU placement might be due to a racial incident, the inmate's IHC would be considered for change to the code RT until the matter is investigated or resolved.

Should an inmates placement in an ASU result in the issuance of a Rules Violation Report, the inmate may be considered for placement in a Security Housing Unit (SHU), which is designed to remove an inmate from the general population for an extended period of time. If the reason for the SHU placement is associated with a racial incident, staff must carefully assess the inmate's ability to participate in the IHP while serving his SHU term.

An inmate may request placement in a Protective Housing Unit (PHU), or be considered for such placement by staff, for a variety of reasons as detailed in Title 15 subsection 3341.5(a), and particularly if it has been verified that the inmate is in present danger of great bodily harm. Staff should be very careful in assessing whether the reason for the PHU placement was in any way associated with a racial incident, as this could affect housing in the PHU and future housing as well.

For safety and security reasons, the Department is very aggressive in assessing an inmate's involvement in a prison gang or their affiliation or association with a disruptive group. An inmate that is validated to be a gang member is required to serve an indefinite SHU term, to be terminated only upon debriefing or serving at least six years of the indefinite term without any gang involvement or contact. While an inmate may not be a gang member, they may chose to affiliate or associate with a particular gang based on their race and the part of the state where they resided. Such gang

involvement would warrant consideration by staff to code an inmate as only partially eligible to participate, or to not even be eligible for the IHP.

The Department has determined that extra consideration must be given to inmates that have medical or mental health issues. While correctional staff may not be aware of the exact nature of the medical or mental health issue, staff must exercise good judgment in determining such an inmate's eligibility to participate fully in the IHP due to the increased potential for unpredictable behavior by such inmates.

While the length of an inmate's term is considered a case factor, it is also a safety concern. The length of an inmate's term would not impact the determination of just how an inmate is eligible to participate in the IHP, but it could impact other housing considerations. Generally speaking staff would prefer to house inmates together that have terms of similar length; it is not inconceivable that an inmate with a long or even a life term would be jealous of his cellmate who is to parole shortly and decide to assault him.

In a similar fashion an inmate's height, weight, and age would be factors in the housing of inmate's, although not necessarily in their eligibility coding. Typically an older inmate would prefer to be housed with someone closer to their own age. Staff may prefer to house an inmate that is in excellent physical shape or that is very large with an inmate of similar stature rather than with someone that is very slender, disabled, or is physically vulnerable.

The Department has determined that if an inmate has been deemed eligible to participate in the IHP but refuses to do so, the inmate will be subject to the disciplinary process with the potential for a loss of privileges and to be housed in more restrictive housing. Formerly an inmate would be charged with Refusing a Direct Order, a Division F offense, for refusing a housing assignment. The Department is now adding new Title 15 subsection 3005(c) to charge an inmate that is refusing to accept assigned housing and to be escorted to the bed assignment, for the specific act of Willfully Resisting, Delaying, or Obstructing any Peace Officer in the Performance of Duty, a Division D offense. The Department has determined that this increased rules violation will conform more closely to language now existing in Title 15 subsection 3323(f)(6), and will also conform to recently enacted regulations regarding inmate Indecent Exposure.

The Department also recognizes that the loss of certain privileges is an effective tool in behavioral modification for an eligible inmate that will not participate in the IHP. Thus an inmate that refuses to accept a housing assignment can lose any or all privileges such as canteen, appliances, vendor packages, telephone privileges, and personal property for up to 90 days for a first offense, and for a period of up to 180 days for a second offense. These time periods have been selected based on the Department's experience that generally an inmate will conform more readily within these time periods to behavioral expectations, and they fit within existing penalties for other rules violations of a similar nature. These time frames also conform to recently enacted regulations regarding inmate Indecent Exposure.

Ultimately an inmate's refusal to participate in the IHP can lead to the assessment of a SHU term. The assignment of a low SHU term of 3 months, to a high SHU term of 9 months, was selected as this range fits within existing penalties, and this range also is consistent with the SHU term range of recently enacted regulations regarding Indecent Exposure. The Department believes that an inmate's refusal to participate in the IHP by obstructing a peace officer in the performance of their duty is of similar seriousness to that of acts of Indecent Exposure.

The public comment period for the 15 Day Notice of Change to Text commenced on November 30, 2007, and ended on December 18, 2007. There were no public comments submitted.

DETERMINATION:

The Department has determined that no alternative considered would be more effective in carrying out the purpose of this action, or would be as effective and less burdensome to affected private persons than the action proposed.

The Department has determined that no reasonable alternatives to the regulations have been identified or brought to the attention of the Department that would lessen any adverse impact on small business.

The Department has determined that the facts, evidence, and documents initially identified in the Initial Statement of Reasons support an initial determination that the action will not have a significant adverse economic impact on business. Additionally, there has been no testimony or other evidence provided that would alter the Department's initial determination.

ASSESSMENTS, MANDATES AND FISCAL IMPACT:

This action will neither create nor eliminate jobs in the State of California nor result in the elimination of existing business, or create or expand business in the State of California.

The Department determines this action imposes no mandates on local agencies or school districts; no fiscal impact on State or local government, or Federal funding to the State, or private persons. It is also determined that this action does not affect small businesses nor have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states, because they are not directly affected by the internal management of State prisons; or on prison housing costs; and no costs or reimbursements to any local agency or school district within the meaning of Government Code Section 17561.